

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	ET Docket No. 99-254
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	
	)	

**UPDATED COMMENTS OF  
THE RADIO TELEVISION DIGITAL NEWS ASSOCIATION**

The Radio Television Digital News Association (“RTDNA”) (formerly the Radio-Television News Directors Association), by its attorneys, respectfully submits its updated comments in response to the *Public Notice* issued by the Federal Communications Commission (“FCC” or “Commission”) Consumer & Governmental Affairs Bureau in the above-captioned proceeding.<sup>1</sup> RTDNA is the world’s largest professional organization devoted exclusively to electronic journalism. RTDNA represents local and network news executives in broadcasting, cable and other electronic media in more than 30 countries.

RTDNA believes that: (1) the rationale that led to the Commission’s permitting the use of the electronic newsroom technique (“ENT”) for captioning in small and medium markets is still relevant, therefore the rules should not be changed; and (2) local news and public opinion programming on multicast channels serves the Commission’s public interest goals, therefore the Commission should retain the closed captioning

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<sup>1</sup>*In the Matter of Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Public Notice*, CG Docket No. 05-231, DA 10-250 (rel. Oct. 25, 2010) (“*Public Notice*”).

exemptions for channels producing revenues of less than \$3,000,000 and for channels that would be required to expend more than two percent of gross revenues to caption programming. Further, the Commission should continue to apply these exemptions individually to multicast channels.

In the Telecommunications Act of 1996, Congress prescribed that video programming generally be closed captioned to ensure access to people with hearing disabilities.<sup>2</sup> RTDNA participated in the rulemaking proceedings that resulted in the implementing rules ultimately adopted by the Commission.<sup>3</sup> Especially as they pertain to local news programming, these rules evidence a careful balance between the desire to make video programming accessible to the deaf and hearing impaired and Congress' stated desire that the rules not result in a loss of programming choices or a diminution in available local news and public affairs programming.

As a general matter, RTDNA believes that increasing the availability of programming that is accessible to the hearing impaired is a laudable goal. News organizations and local stations have come a long way toward affording disabled Americans access to news programming, captioning all new, non-exempt English programming and making critical information accessible to the deaf and the hearing impaired during emergencies. In fact, where possible, many local stations exceed the

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<sup>2</sup> 47 U.S.C. § 613. Section 713, Video Programming Accessibility, was added to the Communications Act of 1934 by Section 305 of the Telecommunications Act of 1996. Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

<sup>3</sup> See *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report and Order, 13 FCC Rcd. 3272, 3387, ¶ 10 (August 22, 1997) (“*Closed Captioning Report and Order*”); see also *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (“*Reconsideration Order*”).

applicable captioning requirements, with several non-network and non-top 25 market stations providing real-time captioning and with many news organizations voluntarily captioning programming on exempt channels.

Still, the landscape for real-time captioning has hardly changed in the five years since the Commission issued its Notice of Proposed Rulemaking (“NPRM”) in this matter. Real-time captioning remains prohibitively expensive, particularly for local news operations in small and medium markets. And affordable translation/captioning software has not developed to the point where it can demonstrably recognize a variety of voices. RTDNA’s members indicate that further limiting the circumstances under which ENT is permissible would result in staff cuts, diminished newsgathering capabilities, fewer local newscasts and even cessation of news operations. RTDNA submits, therefore, that the Commission should not alter its rule permitting the use of ENT captioning in small and medium markets.

Further, since the digital transition, many of our station members have begun offering local news and public affairs programming on their multicast channels. These programs range from local newscasts to call-in interview shows to twenty-four-hour local weather. While this programming allows our stations to reach wider audiences and better serve their communities, it is often unprofitable or barely profitable. RTDNA’s members indicate that if they are required to add captioning to the locally-produced content on these multicast channels, many will have to consider reducing or eliminating such content, which often is targeted toward underserved, niche audiences. In light of this financial reality, RTDNA submits that the Commission should continue to apply its financial exemptions individually to multicast channels.

## **THE COMMISSION SHOULD CONTINUE TO PERMIT THE USE OF ELECTRONIC NEWSROOM TECHNIQUE TO MEET CAPTIONING REQUIREMENTS IN SMALL AND MEDIUM MARKETS**

The conditions that caused the Commission to decline to adopt any limits on the methodology that can be used to create closed captioning and to permit the use of ENT persist today. ENT strikes a balance between the stations' desire to provide as much information through captioning as possible and the reality that live captioning is both expensive and logistically challenging.

The Commission's rules currently require network affiliated stations in the top 25 markets to real-time caption all of their news programming. In an informal survey of RTDNA members, all of the non-exempt respondents from the top 25 markets report that they comply with this requirement. Additionally, several stations that are not required to use real-time captioning under the Commission's rules still use real-time captioning for some or all of their local news programming. While the expense for real-time captioning varies based on market conditions, technologies used, and the amount of local news programming a station broadcasts, expenses often exceed \$15,000 per month. Unfortunately, there does not appear to be a correlation between the substantial expense of real-time captioning and the benefit, with the news director of one station in a market outside the top 25 calling the quality "horrendous" and another saying it is "not reliable for key words and details."

Non-network affiliated stations within the top 25 markets and stations outside of those markets are permitted to use ENT, in which captions come from text in the station's news script computers. Admittedly, ENT can only be used to convert the dialogue included on a teleprompter script into captions. Segments that cannot be scripted,

including interviews, field reports and late-breaking weather and sports may not be available to persons with hearing disabilities. Where it is available, however, ENT provides the exact script as written in the station's computers without issues related to transcription errors. Moreover, even non-scripted elements of news programming that are not captured by ENT can be communicated in other ways or at other times, *e.g.*, through the use of graphics or crawls.

Small and medium market stations still believe that if the requirement for real-time captioning of local newscasts is expanded beyond network affiliates in the top 25 markets, their local news operations will be placed under tremendous financial strain. Most of the stations indicated that they have researched the costs of real-time captioning, with eighty-three percent (83%) of the station's indicating that it would result in more than \$100,000 in additional costs annually and some saying the additional cost could reach almost \$300,000 annually. As the general manager of one station stated, "the cost of captioning would be added to the news budget," and "the news director would have to cut something else to make up for it."

That "something else" could be staff, equipment upgrades, or local news altogether. Fifty-five percent (55%) of respondents said their stations would have to at least consider reducing their news staff to cover the expense of real-time captioning, with almost one-third indicating they would definitely reduce their news staff. A smaller number said they would consider reducing the amount of news their stations produce to lower their captioning expenses. One news director fears that the owners of his station, who have been "looking for any reason to layoff staff" in light of the recent economic downturn, would drop local news altogether. While some stations indicated that they

would turn to voice recognition technology to bring down the costs of real-time captioning, this technology is still developing and has yet to be deployed commercially.

**THE COMMISSION SHOULD RETAIN THE FINANCIAL-BASED EXEMPTIONS TO ITS CLOSED CAPTIONING REQUIREMENTS, APPLYING THE EXEMPTIONS INDIVIDUALLY TO MULTICAST CHANNELS**

The concerns that led the Commission to adopt exemptions to the closed captioning rule based on the ability of each individual channel to assume the cost of captioning also persist today. Many stations have expanded their local news and public affairs programming in the last several years; this is especially true in the case of digital multicast channels. Where a channel only generates limited revenue or where the cost of captioning would exceed a certain percentage of that channel's revenue, however, a closed captioning mandate could lead to the elimination of such local programming that serves the public interest.

The FCC's closed captioning rules contain two exemptions based on a channel's financial status and ability to absorb the costs of offering closed captioning: (1) captioning is not required on a channel where the required expenditure would exceed two percent (2%) of the gross revenues received from that channel during the previous calendar year,<sup>4</sup> and (2) captioning is not required on channels producing gross annual revenues of less than three million dollars (\$3 million) during the previous calendar year (other than the ability to pass through programming already captioned)<sup>5</sup>. Such exemptions reflect the Commission's concern in adopting the closed captioning mandates

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<sup>4</sup> 47 C.F.R. § 79.1(d)(11) (2010).

<sup>5</sup> 47 C.F.R. § 79.1(d)(12) (2010).

for balancing the benefits that captioning offers against the potential to hinder the production and distribution of programming.

Any changes to the closed captioning exemptions, particularly to how they apply to multicast stations, would lead to a reduction in the availability of local programming. Almost sixty percent (60%) of the commercial broadcast stations responding to our informal survey indicated that they currently offer local news and/or public affairs programming on their multicast channels. Such programming often includes additional local newscasts, around-the-clock weather, hosted interview shows with local officials, and niche information programs that provide information that would otherwise not be available about certain demographic groups within the community. As such, our members' use of their multicast channels advances the Commission's public interest, diversity, and localism goals beyond the service provided on their primary broadcast channels.

While our members are committed to offering local programming on their digital multicast channels that serves members of their communities, they can only do so where the economics make sense. Given that most of the programs offered on digital multicast channels generate substantially lower revenues than programming on primary broadcast channels, these programs are especially sensitive to any increase in production and distribution costs. If the Commission were to remove the captioning exemption for multicast channels, forty percent (40%) of the respondents to our survey would at least consider discontinuing local programming on those channels, with fifteen percent (15%) saying they would definitely discontinue such programming. As one news director explained, "[Captioning] might cost more than we make." The cost of captioning was a

particular concern for news directors whose stations offer twenty-four hour weather programming on their multicast channels, with one noting that “the cost would be astronomical” and another bluntly stating that “we would not continue the service with live captioning.”

## **CONCLUSION**

News organizations and local stations continue to make great strides toward increasing the accessibility of local news and public affairs programming to the hearing-impaired community. Further regulation of closed captioning as it pertains to news programming, however well-intentioned, is both unnecessary and counter-productive. As the market for captioning technologies continues to evolve, so too will the availability of real-time captioning. Premature attempts to force this development by expanding the requirement for real-time captioning of local news beyond network affiliates and the top 25 DMAs would harm the integrity of news operations, the diversity of programming



available to all viewers, and the quality and localism of the news and information provided to many of our nation's viewers. In addition, expanding captioning requirements to fledgling multicast channels would threaten a diverse and valuable source of information for many viewers, thereby compromising the Commission's goals.

Respectfully submitted,

**RADIO TELEVISION DIGITAL NEWS  
ASSOCIATION**

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